

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13186
Docket No. 13034
97-2-95-2-62

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Sheet Metal Workers' International Association
(CSX Transportation, Inc. (former B&OCT Railroad
(Company)

STATEMENT OF CLAIM:

- “1. The Carrier violated the provisions of the current and controlling agreement, and in particular Rule 26 of said agreement, when they improperly dismissed Sheet Metal Worker Leroy Moore, Jr., for ‘Excessive Absenteeism’ on October 24, 1994 following an investigation that was held on September 23, 1994.
2. That accordingly, the Carrier be required to return Mr. Moore to service with compensation for all time lost and that he be made whole for all benefits, such as, but not limited to, vacations, holidays, seniority, medical and dental benefits and any other fringe benefit he may have been deprived of due to his improper dismissal from the service of the Carrier.”

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Claimant was subject to an investigative Hearing on September 23, 1994 on the charge of "excessive absenteeism and tardiness." The referenced dates as to absence or working less than a full day occurred between April 6 and August 25, 1994. Following the Hearing, the Claimant was dismissed from service.

The Organization raised several procedural objections which the Board finds without merit.

As to the contention that the absences or tardiness were not "within 10 days . . . of the occurrence" (Article 5), it is obvious that "excessive" absence can only be judged over an extended period. As to multiple roles of the Department Foreman, he was a witness and also corresponded with the Claimant; however, he did not decide the disciplinary penalty. The Board finds this did not deny the Claimant a fair Hearing.

As background, Public Law Board No. 5428, Award 2, involved the Carrier's dismissal action of the Claimant. That Award modified the discipline to a 60-day suspension, after noting previous suspensions of five and ten days for the same offense. The Award stated the following which is directly relevant here:

" . . . the Board is persuaded that Organization's procedural objections to Carrier's handling of this matter, are without merit. Accordingly, the Board concludes that the Hearing Officer properly entered into evidence . . . Claimant's prior attendance record; and Carrier later properly considered said evidence when attempting to determine whether excessive absenteeism had, in fact, occurred, and, if so, the appropriate amount of discipline to be assessed. Furthermore, Carrier is also correct in contending that Management may cite an employee for excessive absenteeism, even if that employee is unavailable for work for an otherwise good reason."

As a result of PLB No. 5428, Award 2, the Claimant returned to work in March 1994, and he was advised upon his return as to the consequences of failure to maintain satisfactory attendance. The instances cited in the charges here under review commenced almost immediately thereafter. The Claimant's testimony did offer explanations for some of the absences and partial days worked, particularly as to his

wife's illness. However, most of the excuses given were not convincing to the Board and in some instances were in conflict with the facts.

Based on the Claimant's previous record as well as the failure of the Claimant to respond to progressive discipline, the Board finds no basis to modify the Carrier's action in determining that the Claimant was unable or unwilling to meet attendance standards warranting his continued employment.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 23rd day of December 1997.